Re Khong Yuen Leng; ex p Selberan Co Sdn Bhd

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO D5–29–6150 OF 2001
RAMLY ALI J
24 JUNE 2005

Bankruptcy — Interest — Interest on debts — Whether arrears of interest claimed in excess of six years from date of judgment — Limitation Act 1953 s 6(3)

Bankruptcy — Notice — Setting aside — Whether founded upon two separate judgments

The judgment creditor ('JC') had succeeded in obtaining judgment against the judgment debtor ('JD') in the High Court of Singapore. The JC then took steps to register the said judgment in the High Court of Malaya pursuant to the Reciprocal Enforcement of Judgments Act 1958 ('REJA') for the purpose of enforcement. The High Court of Malaya had, vide its order registered the said judgment as a judgment of the High Court of Malaya. Pursuant to O 67 r 7 of the High Court Rules 1980, notice of the registration was served on the JD. Subsequent to the registration of the judgment, the assistant registrar of the High Court of Singapore had proceeded to tax the costs pursuant to the terms of the judgment. By way of registrar's certificate, the assistant registrar had awarded the JC, costs against the JD. By another registrar's certificate, the assistant registrar had ordered costs to be paid by the JC to the second defendant. This was an appeal by the JC against the decision of the senior assistant registrar ('SAR') where the SAR, on an application of the JD, set aside the bankruptcy notice and the creditor's petition both of which were taken out by the JC.

Held, allowing the appeal:

(1) Where a final judgment contained an order for the payment of costs to be taxed the subsequent certificate of taxation which merely quantified the amount of costs to be paid merges with the final judgment such that there was only one final judgment (see para 18). In the present case, the two certificates issued by the assistant registrar of High Court of Singapore expressly stated that they were made pursuant to the judgment. From the language of the certificates, it was clear that the said certificates made no order for the payment of costs. It merely assessed and quantified the amount to be paid as ordered pursuant to the judgment. There was only one final judgment for both the judgment sum and for costs and the assistant registrar's certificates were to be read together and in conjunction with the judgment. There was therefore no issue of there being separate orders as claimed by the JD (see para 19).

(2) The two assistant registrar's certificates in question do not 'command' or 'direct' for the payment of costs. They just quantified the taxed costs.

The 'command' or 'direction' made by the court with respect to the payment of costs was contained in the body of the judgment given by the High Court of Singapore. Therefore that the two certificates of the assistant registrar quantifying the amount of costs to be paid were not 'orders' which were required to be separately registered under the REJA for their enforcement (see para 24). It was sufficient to register the said certificates together with the judgment, which in this case had been duly registered (see para 25).

(3) For all intents and purposes the writ of summons was served on the JD's duly authorised solicitors on 6 July 1994 and therefore, pursuant to the judgment, the JC was perfectly entitled to recover interest on the judgment sum from 6 July 1994 (the date of service of the writ of summons on the JD) (see para 29).

(4) In the bankruptcy notice, the JC claimed interest pursuant to the judgment from 6 July 1994 (the date the writ of summons was served on the JD) until 5 July 2000 which was exactly six years. The JC had therefore not made any claim for interest in excess of six years and hence had not contravened s 6(3) of the Limitation Act 1953 (see para 30).

[**Bahasa Malaysia summary**

Pemiutang penghakiman ('JC') telah berjaya mendapat penghakiman terhadap penghutang penghakiman ('JD') di Mahkamah Tinggi Singapura. JC kemudiannya mendaftar penghakiman tersebut di Mahkamah Tinggi Malaya selaras dengan Akta Penguatkuasaan Penghakiman Bersaling 1958 ('REJA') untuk tujuan pelaksanaan. Mahkamah Tinggi Malaya telah, melalui perintahnya mendaftar penghakiman tersebut sebagai satu penghakiman Mahkamah Tinggi Malaya. Selaras dengan A 67 k 7 Kaedah-Kaedah Mahkamah Tinggi 1980, satu notis pendaftaran telah diserahkan ke atas JD. Berikutan dengan pendaftaran penghakiman tersebut, penolong pendaftar Mahkamah Tinggi Singapura telah mentaksirkan kos-kos selaras dengan terma-terma penghakiman tersebut. Melalui sijil pendaftar, penolong pendaftar telah memberikan JC, kos terhadap JD. Melalui satu lagi sijil pendaftar, penolong pendaftar telah memerintahkan kos-kos dibayar oleh JC kepada defendan kedua. Ini merupakan rayuan dari JC terhadap keputusan penolong kanan pendaftar ('SAR') di mana SAR, pada permohonan JD, mengetepikan notis kebankrapan dan petisyen penghutang yang kedua-duanya dikeluarkan oleh JC.

Diputuskan, membenarkan rayuan:

(1) Apabila sesuatu penghakiman muktamad mengandungi satu perintah untuk pembayaran kos ditaksirkan, sijil taksiran yang dikeluarkan kemudiannya yang hanya menyatakan jumlah kos-kos yang perlu dibayar, sebenarnya bergabung dengan penghakiman muktamad yang mana

akhirnya hanya terdapat satu penghakiman muktamad (lihat perenggan 18). Di dalam kes semasa, kedua-dua sijil yang dikeluarkan oleh penolong pendaftar Mahkamah Tinggi Singapura jelas menyatakan bahawa ianya dibuat selaras dengan penghakiman tersebut. Dari bahasa yang digunakan di dalam sijil-sijil tersebut, ianya jelas yang sijil-sijil tersebut tidak membuat sebarang perintah untuk pembayaran kos. Ianya hanya menaksir dan menyatakan jumlah yang perlu dibayar sebagaimana yang diperintah dibawah penghakiman tersebut. Hanya terdapat satu penghakiman muktamad untuk kedua-dua jumlah penghakiman dan kos dan sijil-sijil Penolong Pendaftar hendaklah dibaca bersama dengan penghakiman tersebut. Oleh yang demikian, tiada isu terdapatnya perintah yang berasingan sebagaimana yang didakwa oleh JD (lihat perenggan 19).

(2) Kedua-dua sijil penolong pendaftar tidak 'memerintah' atau 'mengarah' pembayaran kos-kos. Ia hanya memberitahu jumlah kos-kos yang ditaksirkan. 'Perintah' atau 'arahan' yang dibuat oleh mahkamah berhubung dengan pembayaran kos terkandung di dalam penghakiman yang diberikan oleh Mahkamah Tinggi Singapura. Oleh yang demikian, kedua-dua sijil penolong pendaftar yang memberi jumlah kos untuk dibayar adalah bukan 'perintah' yang perlu didaftarkan secara berasingan di bawah REJA untuk pelaksanaan (lihat perenggan 24). Ianya mencukupi dengan mendaftar sijil-sijil tersebut bersama dengan penghakiman tersebut, sepertimana yang telah dilakukan di dalam kes ini (lihat perenggan 25).

(3) Writ saman telah diserahkan ke atas peguamcara JD pada 6 Julai 1994 dan dari itu, selaras dengan penghakiman tersebut, JC berhak untuk menuntut faedah ke atas jumlah penghakiman dari 6 Julai 1994 (tarikh penyerahan writ saman ke atas JD) (lihat perenggan 29).

(4) Di dalam notis kebankrapan, JC menuntut faedah selaras dengan penghakiman tersebut dari 6 Julai 1994 (tarikh writ saman diserahkan keatas JD) sehingga 5 Julai 2000 yang mana genap enam tahun. Oleh yang demikian, JC tidak menuntut faedah melebihi enam tahun dan dari itu tidak bertentangan dengan s 6(3) Akta Had Masa 1953 (lihat perenggan 30).]

Notes

For a case on interest on debts, see 1 Mallal's Digest (4th Ed, 2002 Reissue) para 2129.

For cases on the setting aside of bankruptcy notices, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1766–1785.

Cases Referred to

Cartwright & Anor v Barker [1975] 2 All ER 970 (refd)

Haroun Al-Rashid, ex parte Daya Leasing [1996] 5 MLJ 321 (refd)

Khoo Kay Hoe (trustees of the estate of Oh Kee Lee @ Oh Phaik Sim, deceased) v Chor Phaik Har and another appeal [1999] 3 MLJ 124 (refd)

Legislation Refered to

Bankruptcy Act 1967 s 3(2)
High Court Rules O 67 r 7
Limitation Act 1953 s 6(3)
Reciprocal Enforcement of Judgments Act 1958

Edward Sow (Ng Yook Woon) for the judgment creditor.
K Maniam (Skrine) for the judgment debtor.

Ramly Ali J:

[1] This is an appeal by the judgment creditor ('JC') against the decision of the senior assistant registrar ('SAR') given on 5 September 2003 where the SAR, on an application of the judgment debtor ('JD'), set aside the bankruptcy notice dated 11 October 2001 and the creditor's petition dated 6 September 2002 both of which were taken out by the judgment creditor.

BACKGROUND FACTS

[2] The JC had succeeded in obtaining judgment for a sum of Singapore $43,688.30 against the JD in the High Court of Singapore on 2 February 1998. In summary the terms of the judgment were as follows:

(i) That the JD pays the JC the sum of Singapore $43,688.30 and costs to be taxed on the standard basis from the date the writ of summons to 2 May 1996 and thereafter on an indemnity/ solicitor and client basis from 3 May 1996 to the date of judgment;

(ii) That the JD was to pay interest on the judgment sum at the rate of 6% per annum from the date the writ of summons was served on the JD;

(iii) That the JC's claim against the second defendant in the suit was to be dismissed with costs to be taxed; and

(iv) That the JC will recover the costs it had to pay to the second defendant from the JD.

[3] The JC then took steps to register the said judgment in the High Court of Malaya pursuant to the Reciprocal Enforcement of Judgments Act 1958 ('REJA') for the purpose of enforcement. The High Court of Malaya had, vide its order dated 8 July 1998 registered the said judgment as a judgment of the High Court of Malaya. Pursuant to O 67 r 7 of the High Court Rules 1980, notice of the registration was served on the JD.

[4] Subsequently to the registration of the judgment, the assistant registrar of the High Court of Singapore had proceeded to tax the costs pursuant to the terms of the judgment. By way of registrar's certificate dated 1 June 1999

the assistant registrar had awarded the JC the sum of Singapore $240,640 as costs against the JD. By another registrar's certificate dated 8 June 1998 the assistant registrar had ordered costs of Singapore $111,947.56 to be paid by the JC to the second Defendant. Under the terms of the judgment the JC is entitled to recover this amount from the JD.

[5] At the time of application for registration of the judgment both the aforesaid costs were yet to be taxed and finalised. In the order dated 8 July 1998 (by the High Court of Malaya) only the judgment sum of Sinapore $43,688.30 and accumulated interest at the rate of 6% per annum calculated from 6 July 1994 to 2 June 1998 in the amount of Singapore $10,248.21 were quantified, converted to Malaysian currency and mentioned (ie totaling a sum of RM137,753.84).

[6] The JC then took out a bankruptcy notice dated 11 October 2001 against the JD. The bankruptcy notice was based on the judgment dated 2February 1998, the registrar's certificate (allocatur) dated 8 June 1998 and the registrar's certificate (allocatur) dated 1 June 1999. In view of the JD's failure to comply with the said bankruptcy notice the JC then filed a creditor's petition dated 6 September 2002 against the JD. Both the bankruptcy notice and the creditor's petition were duly served on the JD.

[7] The JD then filed a summons in chambers (encl 13) to set aside the bankruptcy notice and a separate summons in chambers (encl 16) to set aside the creditor's petition. Both applications to set aside were heard by the SAR on 28 August 2003 who adjourned the matter to 5 September 2003. On 5September 2003 the SAR allowed both the JD's application and set aside the bankruptcy notice and the creditor's petition. By way of a notice of appeal to judge in chambers dated 11 September 2003 (encl 27) the JC now appeals against the whole of the SAR's decision to set aside both the bankruptcy notice and the creditor's petition.

GROUNDS RAISED BY THE JD

[8] Essentially the JD challenges the bankruptcy notice as being defective and hence the creditor's petition, which emanates from the bankruptcy notice, is bad in law. From the cause papers and affidavits filed by the JD, the grounds on which the JD had relied on in setting aside the bankruptcy notice and the creditor's petition are as follows:

(a) That the inclusion of the amounts assessed by the assistant registrar in the bankruptcy notice resulted in three separate orders were lumped into one bankruptcy notice and hence is in breach of the Bankruptcy Rules and therefore the creditor's petition cannot stand;

(b) That the registrar's certificates on the taxation of costs dated 8 June 1998 and 1 June 1998 had to be registered independently

under the Reciprocal Enforcement of Judgments Act 1958 ('REJA') before it could be enforced;

(c) That the JC is not entitled to interest as claimed in the bankruptcy notice as the Singapore Suit No 1 of 1996 was allegedly commenced after 1996 and hence the JC had allegedly no basis for claiming interest from 6 July 1994;

(d) That the JC is statute barred by virtue of s 6(3) of the Limitation Act 1953 to recover interest in excess of six years; and

(e) That the amount claimed in the bankruptcy notice is erroneous as a erroneous exchange rate was used.

[9] The court shall now deal with the JD's grounds one by one.

(a) The issues of whether there were three separate orders limped together into one bankruptcy notice

[10] The judgment was obtained from the Singapore High Court on 2February 1998 with an order that costs were to be taxed. The costs taxed and payable by the JC to the second defendant were to be recovered from the JD (first defendant in that case). The said judgment was then registered under the Reciprocal Enforcement of Judgments Act 1958 ('REJA'). Subsequently the assistant registrar of the Singapore High Court had taxed the costs and accordingly issued two certificates. The first was for the sum of Singpore $111,947.56 as costs due and payable by the JC to the second defendant in that suit, which pursuant to the judgment was recoverable by the JC from the JD. The second certificate was for the sum of Singapore $240,640 which was the costs due and payable by the JD to the JC. The JC then took out a bankruptcy notice claiming the judgment sum together with both sets of costs assessed and quantified by the assistant registrar.

[11] It is pertinent to note that the order for the payment of costs is contained in the judgment of the Singapore High Court dated 2 February 1998. The two certificates of the assistant registrar do not order the payment of costs but rather merely assess and quantify the amount of costs to be paid (as earlier ordered in the judgment dated 2 February 1998) The order for payment is made by the Singapore High Court in its judgment dated 2 February 1998. Therefore for all intents and purposes there is only one final judgment on which the bankruptcy notice is based. The two certificates of the assistant registrar are not separate order and must be considered as being part and parcel of the judgment entered on 2 February 1998.

[12] I find support from the English decision of *Cartwright & Anor v Barker* [1975] 2 All ER 970 where this issue was considered. In the said case the petitioning creditor had obtained an injunction against the debtors. In the order granting the injunction it was also ordered that costs due to the petitioning creditor were to be taxed and paid by the debtors. After the costs were taxed

the debtors failed to pay the costs to the petitioning creditor and as a result a bankruptcy notice was issued. The debtors then applied to set aside the bankruptcy notice on the grounds that the allocatur was insufficient to sustain a bankruptcy notice. In that case the Divisional Court of Appeal had set aside the bankruptcy notice on the ground that it did not refer to the main judgment from which the order for costs emanated ie the source of liability had not been identified. However, the Court of Appeal held that an allocatur was not a final judgment and that the taxing master's certificate had to be considered together with the main order in order to constitute one final order. This is what the Court of Appeal said through Goulding J:

> In my judgment it is clear that the certificate of 20 March 1974 is not a final judgment or order. It is not in any sense an order for the payment of a sum of money. The order is that of the court dated 5 November 1970. In order to execution on it would be necessary to produce both the order of 5 November 1970 and the taxing master's certificate, or possibly to have the amount of costs found due by the certificate endorsed on the order of 5 November 1970 itself by procedure similar to that considered in *Re Crump*.

[13] At home, our own High Court has also dealt with this issue in the case of *Haroun Al-Rashid, ex parte Daya Leasing* [1996] 5 MLJ 321 wherein the judgment creditor had claimed the judgment sum pursuant to a judgment dated 28 June 1988 wherein costs were also ordered against the judgment debtor. The costs were taxed and assessed at RM4,261.26 by the magistrate on 27 July 1998. It was argued that the bankruptcy notice claiming the judgment sum together with interest and costs was defective as it was based on two judgments ie the main judgment and purported 'judgment' for costs. This is what the High Court said:

> It is apparent from the terms of the abovementioned judgment, order and notice, that there is only one final judgment dated 28 June 7908. The order dated 27 July 1988 is in respect of costs which is a decree of the court itself on 28 June 1988 ordering costs to be paid and the order dated 27 July 1988 merely orders the JC to pay this decreed costs together with interest thereon calculated at the rate 8% per annum from 27 July 1988 to the days of realization. Therefore it is clear in the case of costs the effective judgment is the decree of the court on 28 June 1988 itself, not the order dated 27 July 1988 quantifying the amount.

[14] Although the High Court had set aside the bankruptcy notice on other grounds the High Court was clear in no uncertain terms that the order quantifying the costs was part and parcel of the main judgment and there was no issue of there being two separate judgments.

[15] In the case of *Khoo Kay Hoe (trustees of the estate of Oh Kee Lee @ Oh Phaik Sim, deceased) v Chor Phaik Har and another appeal* [1999] 3 MLJ 124, a bankruptcy notice was issued purely based on an allocatur, as the sum awarded as costs became the sole judgment debt. The JD tried to set aside the bankruptcy notice on the ground of nullity, as the allocatur was not a final judgment

which could support the issuance of a bankruptcy notice. The issue before the court was whether the allocatur on its own was sufficient to sustain the bankruptcy notice.

[16] The High Court held that as the final order required costs to be taxed by the registrar, the allocatur which bears the result of such taxation should rightly constitute part of and be read in conjunction with the final order earlier given. In that case, the High Court further held that the judgment creditor is entitled to commence bankruptcy proceedings against the judgment debtor based on the allocatur which was submitted together with the final order of the court. On appeal, the Court of Appeal agreed with the views of the High Court and dismissed the appeal. His Lordship Abdul Malek Ahmad JCA (now PMR) said:

> We are faced with a situation here whether the so called final judgment or order relates to costs which form the basis of the consequent bankruptcy proceedings. But those costs are not quantified in that final order. This is followed by the allocatur where the quantification takes effect. In essence, the allocatur merges with the order for costs.

[17] The said case went further on appeal to the Federal Court. The Federal Court agreed with the Court of Appeal that the allocatur was part of the original order for costs in the main judgment. The Federal Court also dismissed the appeal.

[18] From the above authorities, it is clear that where a final judgment contain an order for the payment of costs to be taxed the subsequent certificate of taxation which merely quantifies the amount of costs to be paid merges with the final judgment such that there is only one final judgment.

[19] In the present case, the two certificates issued by the assistant registrar of the Singapore High Court expressly state that they were made pursuant to the judgment dated 2 February 1998. From the language of the certificates, it is clear that the said certificates makes no order for the payment of costs. Itmerely assesses and quantifies the amount to be paid as ordered pursuant to the said judgment dated 2 February 1998. It is therefore obvious that there is only one final judgment for both the judgment sum and for costs and the assistant registrar's certificates are to be read together and in conjunction with the said final judgment dated 2 February 1998. There is therefore no issue of there being three separate orders as claimed by the JD. It is also obvious from the bankruptcy notice that it was based only on one final judgment and not on three separate orders as the JD so contends. The body of the said bankruptcy notice reads as follows:

> ADALAH DIBERI NOTIS BAHAWA dalam masa tujuh (7 hari) selepas notis ini disampaikan kepada kamu yang tidak termasuk hari penyampaian itu, kamu mestilah membayar kepada Selberan Co Sdn Bhd yang beralamat di No 4, Jalan Usahawan Enam, Setapak Jaya, 53200 Kuala Lumpur, wang sebanyak Ringgit Malaysia Sembilan

Ratus Enam Puluh Dua Ribu Lapan Ratus Lapan Puluh Enam Dan Sen Lapan sahaja (RM962,886,08) yang dituntut oleh mereka sebagai wang yang kena dibayar atas suatu penghakiman bersama-sama faedah dan kos yang tercatit di bawah yang didapati oleh mereka terhadap kamu dalam Mahkamah Tinggi di Republic Singapura dibawah Bi Guaman 1 tahun 1996 vang bertarikh 2 Februari 1998...

[20] On the above considerations, the court is satisfied that this ground raised by the JD cannot stand.

(b) That the assistant registrar's certificates on the taxation of costs dated 8 June 1998 and 1 June 1998 had to be registered independently under the Reciprocal Enforcement of Judgments Act 1958 (REJA 1958) befort they could be enforced

[21] Section 4 of the REJA 1958 reads:

A person, being a judgment creditor under a judgment to which this part applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered.

[22] The section speaks of the registration of a judgment. Section 2 of the same Act defines 'judgment' as follows:

'judgment' means a judgment or order given or made by a court in any civil proceedings … to be a judgment given in the High Court.

[23] The contention of the JD is that the two certificates of the assistant registrar are separate orders and hence need to be registered separately in order to be enforceable. The question is: Are the two certificates of the assistant registrar 'order' for the purpose of registration under the REJA 1958?

[24] The CLJ Law Dictionary defines the word 'order' as a 'command or direction made by the court'. In the present case, the two assistant registrar's certificates in question do not 'command' or 'direct' for the payment of costs. They just quantify the taxed costs. The 'command' or 'direction' made by the court with respect to the payment of costs is contained in the body of the judgment given by the Singapore High Court on 2 February 1998. It follows therefore that the two certificates of the assistant registrar quantifying the amount of costs to be paid are not 'orders' which are required to be separately registered under the REJA 1958 for their enforcement.

[25] It is sufficient to register the said certificates together with the main judgment dated 2 February 1998, as they are not separate 'orders' and must be considered as being part and parcel of the main judgment, which in this case has been duly registered. Otherwise the terms of the judgment made by the Singapore High Court on 2 February 1998 would be rendered meaningless.

(c) That the JC is not entitled to interest as claimed in the bankruptcy notice as the Singapore Suit No 1 of 1996 was allegedly commenced after 1996 and hence the JC had allegedly no basis for claiming interest from 6 July 1994

[26] In the bankruptcy notice, the JC claims the sum of Singapore $15,742.15 being interest from 6 July 1994 to 5 July 2000. This is pursuant to the judgment dated 2 February 1998 which orders 'first defendant does pay the plaintiff's interest at 6% per annum from the date the writ of summons was served on the first defendant'. The dispute here is over the date the writ of summons was served on the JD.

[27] The JD contends that it was some date after 1996. The JC on he other hand says it was in 1994. As a matter of fact, the writ of summons was actually served on the JD solicitors on 6 July 1994 in Singapore. There are evidence and records to show that the JD's Singapore solicitors Ms Martin & Partners, had written to the JC's Singapore solicitors Ms Wong & Partners, on 2 July 1994 to inform them that they had instructions to accept service on behalf of the JD (exh 'RAJ–1' — affidavit affirmed by Arul Raja a/l Joseph on 26January 2005).

[28] At that material time the suit was filed in the subordinate court in Singapore as Suit No 10438 of 1993. Pursuant to Ms Martin & Partners confirmation that they had instruction to accept service on behalf of the JD, the JC's solicitors then served the writ of summons on Ms Martin & Partners on 6 July 1994. Proof such service is found endorsed in exh 'RAJ–2' of the same affidavit.

[29] Subsequently upon an application made to the High Court of Singapore by the JC and after hearing submissions from both solicitors for the JC and the solicitors for the JD, the High Court ordered that suit No 10438 of 1993 be transferred to the High Court. For this purpose the deputy registrar had on 6 January 1996 informed all parties that suit No 10438 of 1993 was re-numbered as suit 1 of 1996. It is pertinent to note that the JD was already represented at that material time and the writ of summons had already been served on 6 July 1994 on his duly appointed solicitors. There was no need for the writ of summons to be re-served. In any event there was absolutely no objection raised by the JD during the proceedings in the High Court of Singapore against the service of the writ of summons. Therefore, for all intents and purposes the writ of summons was served on the JD's duly authorised solicitors on 6 July 1994 and therefore, pursuant to the judgment dated 2February 1998, the JC is perfectly entitled to recover interest at the rate of 6% per annum on the judgment sum from 6 July 1994 (the date of service of the writ of summons on the JD).

(c) That the JC is statute barred by virtue of s 6(3) of the Limitation Act 1953 to recover interest in excess of six years

[30] In the bankruptcy notice, the JC claims interest pursuant to the judgment from 6 July 1994 (the date the writ of summons was served on the JD) until 5 July 2000 which is exactly six years. The JC has therefore not made any claim for interest in excess of six years and hence has not contravened s 6(3) of the Limitation Act 1953 which provides that 'no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

(d) That the amount claimed in the bankruptcy notice is erroneous as an erroneous exchange rate was used

[31] Prior to the present bankruptcy proceedings before this court, the JC had commenced proceedings based on the same Singapore judgment in the High Court of Kuala Lumpur vide suit No D1–29–71 of 2001. In those proceedings the JD had also applied to set aside the bankruptcy notice and had succeeded is do so. in his application to set aside the bankruptcy notice in Suit No D1–29–71 of 2001, the JD had affirmed an affidavit in support whereby the JD contended that the JC had used a wrong exchange rate. Paragraph 8 of the said affidavit reads as follows:

> Saya telah menyiasat tentang kadar pertukaran wang asing yang wujud pada tarikh penghakiman, iaitu 2 Februari 1998 dan saya telah diberitahu bahawa kadar pertukaran tidak ada disebabkan bahawa hari itu adalah cuti am bagi Negeri Wilayah Persekutuan. Oleh yang demikian kadar pertukaran wang asing pada 3 Februari 1998 seharusnya digunakan iaitu 2.3370 dan bukan kadar pertukaran wang asing yang wujud pada tarikh sebelum tarikh penghakiman tersebut. Saya lampirkan sesalinan keratan surat khabar 'The Star' bertarikh 4 Februari 1998 dalam muka surat 6 (Bahagian Perdagangan) dan ditandakan sebagai eks 'KYL–1' yang menunjukkan kadar pertukaran wang asing Singapura iaitu 2.3370 pada 3 Februari 1998. Ini bermakna bahawa kadar pertukaran wang asing yang didapati di dalam jadual notis kebankrapan tersebut iaitu 2.5540 adalah berlebihan. Sebagai penjelasan yang lebih lanjut, saya lampirkan di bawah bandingan kira-kira bagi tuntutan notis kebankrapan tersebut berdasarkan ke atas penghakiman tersebut bagi kadar 2.5540 (kadar yang di dapati di dalam notis kebankrapan tersebut) dan bagi kadar 2.3370 (kadaryang wujud pada 3 Februari 1998):
>
> S$413,131.11 x 2.5540 = RM1.055,136.80
>
> S$413,131.11 x 2.3370 = RM 965,487.40

[32] In short, the JD, in suit No D1–29–71 of 2001 contended that the applicable exchange rate was 2.3370 and not 2.5540 as used in that bankruptcy notice. The said bankruptcy notice was set aside by the SAR. Instead of appealing the JC decided to issue the present bankruptcy notice against the JD. In the present bankruptcy notice the JC had used the exchange rate of 2.3370 as contended by the JD in suit No D1-29-71 of 2001. In view of his previous

averments on the same issue, it is completely unconscionable for the JD now to blow hot and cold to say that the exchange rate is still erroneous when he himself had conceded that 2.3370 is the applicable rate. This ground raised by the JD is therefore cannot stand.

CONCLUSION

[33] On the premise of the above considerations the court is of the view that the grounds raised by the JD are both frivolous and vexatious and were raised purely to frustrate the JC's efforts to enforce the judgment which it had validly obtained against the JD in the Singapore High Court on 2 February 1998. The amount claimed by the JC complies strictly with the terms of the judgment and the JD is fully aware of the exact amount he had to pay in order to avoid committing an act of bankruptcy. The amount claimed is not excessive as the JD contends.

[34] In any event the JD had failed to any notice within seven days from the date of the bankruptcy notice was served on him to show where the excesses were pursuant to the proviso in s 3(2) of the Bankruptcy Act 1967. There is nothing in the Bnakruptcy Notice which misled the JD. The JD was present and represented by counsel throughout the proceedings before the Singapore High Court in which judgment was entered against him. He has full knowledge of the judgment sum entered against him and the costs that were awarded against him. There is nothing perplexing or ambiguous in the bankruptcy notice as it clearly states the amount due and payable as RM962.886.08. It is ascertained and quantified. There was nothing else to be quantified. It clearly tells the JD that this is the amount that he has to pay in order to avoid committing as act of bankruptcy. He did not pay the amount nor did he challenge the amount within the time frame granted to him and as such a creditor's petition was issued based on the said bankruptcy notice.

[35] Therefore, the court finds that the bankruptcy notice (encl 3) is valid and hence the creditor's petition (encl 10) is also valid. Therefore, the JC's appeal is allowed with costs.

Appeal allowed with costs.

Reported by Peter Ling